



PRIVACY, GOVERNMENTAL  
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, DC 20224

May 21, 2019

MuckRock News  
DEPT MR 52666  
411A Highland Ave  
Somerville, MA 02144-2516

Dear MuckRock News:

This is our final response to your Freedom of Information Act (FOIA) request dated April 21, 2018 that we received on April 21, 2018.

You asked for all emails sent to, from, or copied to Lee Martin, Director, from January 1, 2016 to Present Day containing at least one of the following non-case-sensitive key-strings: "EB-5", "Norberg", "SEC", "Delay", or "backlog."

Of the 96 pages located in response to your request, I am enclosing 96 pages on a compact disc (CD). I am withholding 79 pages in part and 11 pages in full under FOIA exemptions (b)(3), (b)(5), (b)(6), (b)(7)(A), and (b)(7)(E).

- The withheld portions are the return information of other taxpayers. FOIA exemption (b)(3) requires us to withhold information that is specifically exempted from disclosure by another law. The law supporting this exemption is Internal Revenue Code (IRC) section 6103(a).
- FOIA exemption (b)(5) exempts from disclosure inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency. The deliberative process privilege protects documents that reflect the pre-decisional opinions and deliberations that play a direct part in the process of making recommendations on legal or policy matters.
- FOIA exemption (b)(6) exempts from disclosure information that, if released, would clearly be an unwarranted invasion of personal privacy. These include medical, personnel, and similar files. The Supreme Court ruled that Congress intended the "similar files" provision to be construed broadly, so that all information which applies to a particular individual qualifies for consideration under exemption (b)(6). We base the determination to withhold on a balancing of interests between the protection of an individual's right to privacy and the public's right to access government information.

- FOIA exemption (b)(7)(A) exempts from disclosure records or information compiled for law enforcement purposes, but only to the extent that production of such records could interfere with enforcement proceedings. Disclosure of this information is also exempt under FOIA subsection (b)(3) supported by Internal Revenue Code section IRC Section 6103(e)(7), because release would impair federal tax administration.
- FOIA exemption (b)(7)(E) exempts from disclosure records or information compiled for law enforcement purposes to the extent their production would reveal:
  1. techniques and procedures for law enforcement investigations or prosecutions, or
  2. guidelines for law enforcement investigations or prosecutions, if release could reasonably be expected to risk circumvention of the law.

The redacted portions of each page are marked by the applicable FOIA exemptions. I have separately sent you a letter that provides the instructions and password for accessing the information on the CD.

This constitutes a partial denial of your request. I have enclosed Notice 393 explaining your appeal rights.

There are no fees associated with this request.

## **APPEAL RIGHTS**

You have the right to file an administrative appeal within 90 days of the date of this letter. By filing an appeal, you preserve your rights under FOIA and give the agency a chance to review and reconsider your request and the agency's decision. I've enclosed Notice 393, *Information on an IRS Determination to Withhold Records Exempt From the Freedom of Information Act - 5 U.S.C. 552*, to explain your appeal rights.

If you would like to discuss our response before filing an appeal to attempt to resolve your dispute without going through the appeals process, you may contact me, the FOIA Public Liaison, for assistance at:

David Nimmo  
Internal Revenue Service  
Disclosure Office 13  
24000 Avila Road, M/S 2201  
Laguna Niguel, CA 92677  
949-575-6328

The FOIA Public Liaison responds to FOIA and Privacy Act requests for copies of documents maintained by the IRS. There is no provision in either Act to resolve tax, collection, or processing issues and our staff is not trained to answer questions

regarding those issues. If you need assistance with tax related issues you may call the IRS toll free number at 1-800-829-1040.

If you are unable to resolve your FOIA dispute through our FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road--OGIS  
College Park, MD 20740-6001  
202-741-5770  
877-684-6448  
ogis@nara.gov  
ogis.archives.gov

If you have any questions please call Tax Law Specialist, Michael C. Young, ID # 1000436696, at 949-575-6406 or write to: Internal Revenue Service, HQ FOIA – Stop 211, PO Box 621506, Atlanta, GA 30362. Please refer to case number F18113-0042.

Sincerely,

A handwritten signature in black ink that reads "David Nimmo". The signature is written in a cursive, flowing style.

David Nimmo  
Disclosure Manager  
Disclosure Office 13

Enclosures: CD (1) and Notice 393



Department of the Treasury  
Internal Revenue Service

## Notice 393

(Rev. September 2016)

### Information on an IRS Determination to Withhold Records Exempt From The Freedom of Information Act – 5 U.S.C. 552

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#### Appeal Rights

You may file an appeal with the Internal Revenue Service (IRS) within 90 days after we (1) deny you access to a record in whole or in part; (2) have made an adverse determination as to your category as a requester; (3) deny your request for a fee waiver or reduction; or (4) have advised you that no records responsive to your request exist. You may file an appeal within 10 days when a request for expedited processing has been denied.

Your appeal must be in writing, must be signed by you, and must contain:

Your name and address,

- Description of the requested records,
- Date of the request (and a copy, if possible),
- Identity of the office and contact on the response letter, and
- Date of the letter denying the request (and a copy, if possible)

Mail your appeal to:

#### IRS Appeals

Attention: FOIA Appeals  
M/Stop 55202  
5045 E. Butler Ave.  
Fresno, California 93727-5136

#### Judicial Review

If we deny your appeal, or do not address an issue raised in your appeal within 20 days (excluding Saturdays, Sundays, or legal public holidays) after the date we receive your appeal, you may file a complaint in United States District Court in the district in which (1) you reside; (2) your principal place of business is located; (3) the records are located; or (4) the District of Columbia. A complaint may be filed within 10 days (excluding Saturdays, Sundays, or legal public holidays) after the date we receive your appeal if your appeal is from an adverse determination of a request for expedited processing. If you choose to file suit before receipt of a final determination by the Appeals office, the administrative appeals process may cease.

The rule for effecting service of judicial process upon the Internal Revenue Service is set forth in Federal Rule of Civil Procedure 4(i). In addition to service upon the

United States, as set forth in Rule 4(i)(1), service must be made upon the Internal Revenue Service by registered or certified mail as set forth in Rule 4(i)(2)(A).

The address of the Internal Revenue Service is: Internal Revenue Service, Attention CC:PA, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. Exemptions The Freedom of Information Act, 5 U.S.C. 552, does not apply to matters that are:

(b)(1) • specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified under such executive order,

(b)(2) • related solely to the internal personnel rules and practices of an agency,

(b)(3) • specifically exempted from disclosure by statute (other than section 552b of this title), provided that the statute:

(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

**Note:** Internal Revenue Code sections 6103 and 6105 are statutes which qualify for exemption 3 treatment. Section 6103 protects the confidentiality of tax returns and information pertaining to a taxpayer collected by the IRS. Section 6105 protects information obtained from a foreign country under a tax treaty.

(b)(4) • trade secrets and commercial or financial information obtained from a person and privileged or confidential,

(b)(5) • inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency,

(b)(6) • personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy,

(b)(7) • records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication,

(C) could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(D) could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

(E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(F) could reasonably be expected to endanger the life or physical safety of any individual.

(b)(8) • contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, or

(b)(9) • geological and geophysical information and data, including maps, concerning wells.

